

IRS Announces Regulations Will be Issued to Prevent Duplication of Losses Within a Consolidated Group on Dispositions of Member Stock

Notice 2002-18

In Notice 2002-11 (2002-7 I.R.B. 526), the Internal Revenue Service announced its intention to promulgate interim regulations that, prospectively from the date of their issuance, will require consolidated groups to determine the allowable loss on a sale or disposition of subsidiary stock under an amended § 1.337(d)-2 of the Income Tax Regulations.

Concurrently with this Notice, the IRS and Treasury are filing with the Federal Register temporary regulations under §§ 337(d) and 1502 of the Internal Revenue Code that set forth rules governing a consolidated group's allowable loss, or basis reduction, on a disposition or deconsolidation of subsidiary stock, as described in Notice 2002-11. These rules do not disallow stock loss that reflects net operating losses or built-in asset losses of a subsidiary member.

Nonetheless, the IRS and Treasury believe that a consolidated group should

not be able to benefit more than once from one economic loss. Accordingly, the IRS and Treasury intend to issue regulations that will prevent a consolidated group from obtaining a tax benefit from both the utilization of a loss from the disposition of stock (or another asset that reflects the basis of stock) and the utilization of a loss or deduction with respect to another asset that reflects the same economic loss. For example, where a member of a group contributes built-in loss assets to another member of the group in exchange for stock of such member in a transaction in which the basis of such stock is determined, directly or indirectly, in whole or in part, by reference to the basis of such assets and the transferor member sells such stock without causing the deconsolidation of the transferee, the group may benefit from the built-in loss in the contributed assets more than once. It is expected that the regulations will defer or otherwise limit utilization of the loss on the stock in such transactions and other transactions that facilitate the group's utilization of a single loss more than once. Such regulations will apply to dispositions of stock (or another asset that reflects the basis of stock) occurring on or after March 7, 2002.

The IRS and Treasury are devoting substantial resources to the development

of the regulations described in this Notice in order to issue the regulations in an expeditious manner. In addition, the IRS and Treasury are studying the various approaches that could be implemented to give full effect to § 337(d) and to reflect the single entity principles of the consolidated return rules.

REQUEST FOR PUBLIC COMMENT

Comments are requested on the scope and substance of the regulations. Direct all written comments to Internal Revenue Service, Attn: CC:ITA:RU (Notice 2002-18), room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. to: CC:ITA:RU (Notice 2002-18), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or submitted electronically to: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2002-18" in the subject line of your e-mail comments. All submissions will be open to public inspection.